THE HON'BLE SRI JUSTICE J.CHELAMESWAR
and
THE HON'BLE SRI JUSTICE D. APPA RAO

W.P. No.21081 of 2006

Dated: 18.10.2006

Between:-

Mahamood Khan

..Petitioner

And

The Deputy Transport Commissioner and Secretary,
Adilabad and another.

..Respondents

ORDER (Per JC,J) :

This writ petition is filed with a prayer as follows:

> "To declare the seizure and continued detention of the petitioner's vehicle i.e. jeep bearing registration No.AP-1-T-5623 seized under vehicle check report No.1033653, dated 05-10-2006 by the 2nd respondent and continued detention by the 1st respondent as illegal, arbitrary, improper, unjust, un-constitutional and violation of principle's of natural justice and consequently direct the respondents to release the petitioner's vehicle i.e. jeep bearing registration No.AP-1-T-5623 forthwith to the petitioner pending enquiry. "

2. The petitioner claims to be the owner of the Jeep bearing regn. No.AP-1-T-5623. On 29-09-2006, the vehicle met with an accident, as a consequence of which one person died. A case in Crime No.83 of 2006 came to be registered by the police, P.S. Jainath of Adilabad District, under Sections 304 and 337 of the Indian Penal Code (for brevity 'IPC'). Consequent upon the registration of the said crime, the police seized the vehicle which was involved in the crime. The driver of the vehicle was arrested subsequently.

3. While the vehicle was in the custody of the police, the 2nd respondent-the Assistant Motor Vehicles Inspector, Adilabad, issued proceedings dated 05-10-2006. The substance of the report is that the 2nd respondent inspected the above said crime vehicle which was by then in the custody of the police and on

such inspection, he found certain irregularities detailed in the Cheque Report as follows:

> "1. No proof of AP Tax for quarterly up to 31-12-2006. 2. A.P. Permit not carried. 3. R.C. Book not carried. 4. D.L. was not carried. 5. Insurance certificate not carried. 6. F.C. not carried. 7. P.U.C. certificate not carried.
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> Hence seized under Section 8 of A.P.M.V.T. Act and 207 of M.V. Act and driver/owner is advised to get release orders from Dy. Transport Commissioner, Adilabad. Concerned S.H.O. of the P.S. Jainath, is required to serve a copy of VCT to Driver/Owner of the vehicle."

4. An interesting part of the story is that the 2nd respondent passed an order of seizure under Section 8 of the A.P. Motor Vehicles Taxation Act read with 207 of Motor Vehicles Act and advised the driver/owner to get the release orders from the Deputy Transport Commissioner, Adilabad. The 2nd respondent very courteously requests the Station House Officer, Jainath Police Station, to serve a copy of the cheque report to the driver/owner of the crime vehicle. It appears that the Station House Officer promptly complied with the request. Hence, the present writ petition.

5. The seizure of the vehicle alleged to have been involved in the above mentioned accident is obviously made by exercising the powers vested under Section 102 of the Criminal Procedure Code (for brevity 'Cr.P.C.'), which reads as follows:

> "**Section 102. Power of police officer to seize certain property:-**
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> (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.
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> (2) Such police officer, if subordinate to the officer

in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same."

6. Under sub section (3) of Section 102 Cr.P.C. every seizure is required to be forthwith reported to the Magistrate having jurisdiction where the properties seized.

7. Under Section 457 Cr.P.C. whenever the seizure of property is reported to the Magistrate by the police, the Magistrate is empowered to make such interim order as he thinks fit respecting the disposal of such property or delivery of such property to the persons entitled to the possession thereof. If the person so entitled to the possession of the property is not known to the Court, the Magistrate is required to detain the property for appropriate further steps as contemplated under Cr.P.C.

8. Under Section 452 Cr.P.C. the criminal Court is required to pass appropriate final order as to the disposal of the property produced before it in connection with the trial of a criminal case and such a disposal may be either by way of order for destruction or confiscation or delivery of the property to any person as the case may be depending on the facts and circumstances of the case.

9. From the scheme of the above mentioned provisions, it is clear that the police when they seize any material connected with the crime are bound to report to the Magistrate of the seizure

and also produce the seized material before the Magistrate who alone should have the power to deal with the custody of the material until the trial is concluded and also pass appropriate orders for the disposal of the material at the conclusion of the trial.

10. It is a different matter whether the vehicle involved in an accident for which a case under Section 304 IPC is registered is really required to be seized. We do not propose to examine that question in the present case, but record the fact that a seizure was in fact made in the instant case by the police.

11. Once the vehicle is seized by the police, the vehicle is required to be in the custody of the Court until the Court passed an appropriate order. The custody in the hands of the police until the Court passes an appropriate order is custody held by the police on behalf of the Court. Ironically, in the present case, the 2nd respondent passed an order of further seizure of the vehicle advising the petitioner to approach the 1st respondent for release of the vehicle. Hence, the present writ petition has been filed.

12. We are of the opinion that the seizure effected by the 2nd respondent is illegal for the reason that the property in custody of the Court cannot be seized by another department of the State interfering with the jurisdiction of the Court to pass appropriate orders to the disposal of the property seized and produced before it.

13. In the circumstances, we set aside the order of seizure passed by the 2nd respondent of the above-mentioned vehicle. But that does not mean the petitioner is automatically entitled for the custody of the vehicle. It is open for the petitioner to approach appropriate Court for the release of the vehicle by moving an

appropriate application. The concerned Criminal Court may pass appropriate order on such application being moved by the petitioner.

14. Accordingly, the writ petition is disposed of with the aforementioned direction. No costs.

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J.CHELAMESWAR,J

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October 18, 2006 **D.APPA RAO,J**

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